IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

J U D G M E N T

Ramzan Khan vs. State of Raj.

D.B. SPECIAL APPEAL NO.789/2003

Date of order : 2nd March, 2007

HON'BLE MR. JUSTICE RAJESH BALIA

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Varun Goyal, for the appellant.
Mr. N.M. Lodha, AAG.

BY THE COURT : (PER HON'BLE SHRI RAJESH BALIA, J.)

This appeal has arisen in the following circumstances.

The appellant had filed a suit for declaration and permanent injunction and to correct entries in land record accordingly, claiming himself to be a tenant in cultivatory possession since before Samvat 2002, that is to say, before commencement of Rajasthan Colonization Act, 1954 or Rajasthan Tenancy Act, 1955. He also pointed out that since the land in question was part of erstwhile Jaisalmer

State, of which no revenue record is available, therefore, he is not able to place on record any revenue record of the anterior period.

The Assistant Commissioner, Colonization, Kolayat, who was then conferred with the power of Collector under Section 2(i) of the Rajasthan Colonization Act, 1954 for allotment of land, considering such application under the relevant notification by his order dated 27.4.1987 accepted the claim of the appellant, his suit was decreed vide order dated 27.4.1997. Consequently, petitioner's name was entered in land records.

The State of Rajasthan was a party to said proceedings and was duly represented by the Colonization Tehsildar, who in his written statement has claimed that the applicant was not in possession of the land in question. On the basis of the evidence led before the Assistant Commissioner, Colonization, he found that the long cultivatory possession of the applicant is proved and therefore, he was recorded as 'gair khatedar' tenant.

It appears that in the year 1993, an ex-parte order was passed against the petitioner by the Deputy Commissioner, Colonization, IGNP, Bikaner on 22.9.1993 considering the aforesaid decree to be contrary to law and record and the matter was referred to

the Board of Revenue purporting to be in exercise of power under Section 232 of the Rajasthan Tenancy Act, 1955.

Apart from other contentions, the petitioner had raised an objection that the Deputy Commissioner, Colonization was incompetent on 22.9.1993 to exercise power under Section 232 of the Rajasthan Tenancy Act, 1954 to make any reference to the Board of Revenue. It was pointed out that vide notification dated 19.1.1997 issued under Section 6 of the Rajasthan Colonization Act, power of Collector to make reference under Section 232 to the Board of Revenue in any matter arising in the colony area was specifically conferred on Commissioner, Colonization. On this premise, it was urged by the learned counsel that in any matter arising in any colony area the power to make reference under Section 232 of the Rajasthan Tenancy Act vested exclusively in the Commissioner, Colonization. Therefore, for that purpose the Deputy Commissioner, Colonization could not have made a reference.

The Board of Revenue was of the opinion that since vide notification dated 17.10.1978, issued under Section 6 of the Rajasthan Colonization Act, the Dy. Commissioner, Colonization, Bikaner was conferred with the power of Collector under Rajasthan Colonization Act to try and hear suits, appeals and applications arising under Rajasthan Tenancy Act and by notification of 1992, the notification dated

17.10.1978 was not superseded, the Dy. Commissioner, Colonization continued to exercise the powers of Collector under Section 232 also, therefore, the reference made by him was competent. Reference was accepted on merit.

Aggrieved with the order of the Board of Revenue dated 11.2.1997 accepting the reference made by Dy. Commissioner, Colonization, SB Civil Writ Petition No. 845/2003 was preferred.

The learned Single Judge referred to notification dated 17.10.1978, conferring the power of Collector on the Dy. Commissioner, Colonization and taking note of general hierarchy of the authorities under the Colonization Act held that the Dy. Commissioner, Colonization was competent to make a reference to the Board of Revenue and consequently, the petition was dismissed. Hence this appeal.

The scheme of the Rajasthan Colonization Act reveals that while separate provisions have been made in respect of acquisition of interest in or allotment of lands in the colony area, no separate provisions were made for trying/settlement of the disputes arising thereunder. Section 5 was enacted where under it was provided that except as otherwise provided under the Act of 1954, the laws relating to agricultural tenancies, land, the powers, duties, jurisdiction and

procedure of the revenue Court, shall, in so far as may be, applicable apply to the tenancies held and to the proceedings conducted under the Act of 1954.

Apparently, setting up the revenue courts and there respective jurisdictions, powers and procedures were not provided under the Colonization Act but these matters were to be governed by Rajasthan Tenancy Act and Rajasthan Land Revenue Act.

So far as Section 2 (i) defines “Collector” it is only for the purposes of powers conferred on the Collector under the Colonization Act. Merely by dint of any officer being Collector for the purpose of Colonisation Act, he could not exercise general powers enjoyed by a Collector under Rajasthan Tenancy Act or Rajasthan land Revenue Act or other law relating o agricultural tenancies. Therefore, a Collector, who is not Collector of the District, which is also a definition of the Collector under the Rajasthan Tenancy Act, but who is deemed to be Collector in terms of powers conferred under Section 2 (i) of the Act of 1954, cannot automatically be considered as Collector for the purposes of conducting trial and hear suits, appeals and applications in respect of any revenue dispute arising in the Colony area under Rajasthan Tenancy Act or Rajasthan Land Revenue Act. It is for that reason Section 6 was enacted in the following terms :

> "6. Investing Colonisation Officers with powers of Revenue Courts.- The State Government may, by order published in the Official Gazette, invest any officer appointed for colonization of the Colony with all or any of the powers of a Revenue Court or officer, other than the Board of Revenue, for the purpose of trying and hearing all or any specified classes of applications suits or appeals arising in a colony."

Thus, it is by dint of the Notification issued under Section 6 of the Colonization Act only any officer of Colonization Department could be invested with the powers of the Revenue Courts, excepting the powers of Board of Revenue, with all or any of the powers for the purposes of trying or hearing of all or any class of applications, suits and appeals arising in a colony area.

We may notice that until an amendment was made by Rajasthan Act No.12 of the 1983, inserted w.e.f. 5.8.1980, the power to try and hear applications under the Rajasthan Tenancy Act or Land Revenue Act by any revenue court could not be conferred on officers of the colonization department. Therefore, the conferment of power of a Collector in terms of sub-section (i) of Section 2 of the Act of 1954 by its own force does not confer on such officer of the colonization Department the power of Collector as a revenue court under the Rajasthan Tenancy Act.

Significantly, it is also not necessary that whenever the State Government decides to confer powers of a revenue court on any officer under the Colonization Department then it must confer all the powers of the revenue court but this conferment of power could be confined to some aspects only.

Be that as it may. The question that has arisen before us in the light of two Notifications issued by the State Government in exercise of the powers conferred under Section 6 of the Colonization Act is whether in terms of Notification dated 17.10.1978 power of Collector to make a reference under Section 232 of the Rajasthan Tenancy Act was at all conferred on Dy. Commissioner of Colonization and if so, whether as a result of specific conferment of power under Section 232 for making a reference to the Board under Section 232 on Commissioner, Colonization any other officer, already entrusted with such power was deprived of such authority. In other words whether Notification dated 15.1.1992 results in suppression of Notification dated 17.10.1978 to the extent of conferment of Collector's power under Section 232 on Dy. Commissioner, Colonization, if said Notification included conferment of power under Section 232 exercisable by the Collector.

The notification dated 17.10.1978 was in the following terms:

"राजस्थान सरकार
राजस्व (उपानिवेशन) विभाग

क्रमांक फ4(4)राज/उप/78 जयपुर दिनांक 17.10.1978

अधिसुचना

राजस्थान उपनिवेशन अधिनियम 1954 (1954 का राजस्थान अधिनियम सं0 27) की धारा 6 द्वारा प्रदत शक्तियों का प्रयोग करते हुये तथा इस विभाग की अधिसुचना संख्या स०प०4(7)राज/उप/73 दिनांक 11.10.1974 को अतिष्ठित करते हुये राज्य सरकार एतदद्वारा इसमें उपाबद्व चरणों के स्तंभ 2 मे उल्लेखित उपनिवेशन अधिकारियों की स्तंभ 3 में वर्णित अपनी अपनी अधिकारिता के भीतर राजस्थान काश्तकारी अधिनियम 1955 (1955 का राजस्थान अधिनियम 3) तथा भू - राजस्व अधिनियम 1956 (1956 का राजस्थान अधिनियम 15) के अधीन राजस्थान नहर परियोजना क्षैत्र के भीतर उपनिवेशन में उद्यर्भूत होने वाले मामलों संबंधित कलेक्टर तथा भू - अभिलेख अधिकारी की शक्तियों विनिहित करती है:-

सारणी

क्रम सं*0*	अधिकारियों के पद नाम	प्रादेशिक अधिकारिता
1	उपायुक्त उपनिवेशन राजस्थान नहर परियोजना बीकानेर	तहसील (उपनिवेशन) क्षैत्र 1. बीकानेर 2. लूणकरणसर 3. पूंगल 4. छतरगढ़ सं० 2 मुख्यालय खाजूवाला 5. कोलायत सं० 1,2,3,4.

क्रम सं0	अधिकारियों के पद नाम	प्रादेशिक अधिकारिता
2	उपायुक्त उपनिवेशन राजस्थान नहर परियोजना श्रीविजयनगर	तहसील (उपनिवेशन) क्षैत्र 1. श्रीविजयनगर 2. अनुपगढ़ 3. घड़साना मुख्यालय अनुपगढ़ 4. छतरगढ़ सं० 1 मुख्यालय छतरगढ़
3	उपायुक्त उपनिवेशन राजस्थान नहर परियोजना सूरतगढ़	तहसील (उपनिवेशन) क्षैत्र 1. रावतसर 2. नोरगदेसर मुख्यालय हनुमानगढ़ 3. हनुमानगढ़ 4. सूरतगढ़ नं० 1,2,3. 5. रायसिहंनगर मुख्यालय सूरतगढ़

राज्यपाल के आदेश से,
ह0
शासन सचिव"

Thereafter, the notification dated 15.1.1992 was published which reads in the following terms :

"अधिसुचना संख्या प.4(6) उपनि. 91, जनवरी 15, 1992 – राजस्थान उपनिवेशन अधिनियम 1954 (1954 का राजस्थान अधिनियम संख्या 27) की धारा 6 एवम राजस्थान काश्तकारी अधिनियम, 1955 (वर्ष 1955 का अधिनियम संख्या 3) की धारा 232 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्य सरकार उपनिवेशन क्षैत्र के लिए राजस्थान काश्तकारी अधिनियम के अंतर्गत रेफरेन्स करने की शक्तियां उपनिवेशन क्षैत्र से सम्बन्धित मामलों में उपनिवेशन आयुक्त, इन्दिरा गाँधी नहर परियोजनाण बीकानेर की जिला कलक्टर के कृत्यों का पालन करने के लिए एतदद्वारा अधिकृत करती है" (Published in Raj. Gaz. 1 (Ku) – Dt. 13.2.1992 Page 967).

Apart from the aforesaid two notifications, other relevant

provisions which need to be considered is Section 232 of the Rajasthan Tenancy Act.

However before we consider the provisions of Section 232, we may notice another significant aspect of Section 6 read with Section 5 of the Colonisation Act. It is that the provisions contained in Section 6 are devised to confer adjudicating powers vesting in any revenue court or officer other than the Board of Revenue to decide any lis whether by way of applications or suits or appeals. Section 6 does not envisage that all the powers vesting in various Revenue Officers or the Revenue Court under the Rajasthan Land Revenue Act or Rajasthan Tenancy Act other than adjudicating powers be conferred on the officers of the Colonisation. In other words, it appears to us that the powers exercisable by any of the officers of the revenue whether under the Land Revenue Act or the Rajasthan Tenancy Act which are not of adjudicatory nature cannot be conferred by authorisation under Section 6.

Section 232 of the Rajasthan Tenancy Act does not confer any power on the Collector to adjudicate upon the erroneous nature of any proceedings, order or decree passed by a Court subordinate to Collector but it only enables the Collector that if he is of the opinion that the order or the decree passed or the proceeding taken by any

revenue court subordinate to him should be varied, cancelled or reversed, he may refer such case to the Board for adjudication. The adjudicatory power about the erroneous nature of any proceeding, order or decree vests in the Board, and the powers of Board cannot be delegated under Section 6 of the Act, 1954. That being the position, the conferment of power under Section 6 to try and hear all or any specific class of applications, suits or appeals arising in a colony does not carry with it the power of Collector under Section 232 which is not in the nature of deciding any issue or adjudicate the dispute but is merely for the purpose of holding an opinion to be adjudicated by the Board. The power of adjudication through trial or hearing under Section 232 vests in the Board and there is specific prohibition on conferment of such power of trying and hearing, which vest in the Board, about any dispute by way of application, suit or appeal, cannot be conferred on any officer of the Colonisation by virtue of Section 6.

Assuming that power of Collector to try and hear all or any specific class of application, suit or appeal include the power of Collector under Section 232 to make a reference to the Board and on conferment of power of Collector under Section 6 on the Deputy Commissioner, Colonisation vide notification dated 17/10/1978, the question then arises is what is effect of subsequent notification dated 19/1/1992.

This brings in consideration the province of Section 232 of Rajasthan Tenancy Act and the cognate legislation; Rajasthan Land Revenue Act of which Section 260 is relevant. Section 232 of the Rajasthan Tenancy Act reads as under:-

> **"232. POWER TO CALL FOR RECORD AND REFER TO THE BOARD:- The Collector may call for and examine the record of any case or proceeding decided by or pending before any revenue court subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order or decree passed and as to the regularity of the proceeding, and, if he is of the opinion that the order or the decree passed or the proceeding taking by such court should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board and the Board shall, thereupon, pass such orders as it thinks fit:**
>
> **Provided that the power conferred by this section shall not be exercised in respect of suits or proceedings falling within the purview of Section 239."**

Section 232 by itself does not envisage any officer other than the Collector, as defined in Rajasthan Tenancy Act, has the power to call for and examine record of any case or proceedings decided by or pending before any authority subordinate to him and he alone if

satisfied that order or decree passed or the proceeding taken by such court should be varied, cancelled or reversed, he may make reference to the Board. Section 232 does not provide for exercise of powers under it by any person other than Collector by authorising him in this behalf. It does not read as `Collector or any other officer so authorised' in this behalf.

Section 232 by itself does not envisage that the power to call for record and refer it to the Board to be exercised by the Collector can be delegated either by himself or by State Government authorising somebody else to discharge the function of Collector under Section 232, unless there is some other provision which can be invoked.

So far as the Rajasthan Tenancy Act is concerned, it does not empower the State Government to appoint any other person other than the Collector to discharge the functions of Collector under Section 232. Moreover, it also does not envisage exercise of power under Section 232 concurrently by two or more authorities in respect of same subject matter within the territorial jurisdiction of Collector.

The only other provision which has been brought to our notice under which the law authorises that the functions of any officer under the Rajasthan Tenancy Act can be conferred on any other officer

or authority appointed under the Rajasthan Land Revenue Act or the Rajasthan Tenancy Act or for that matter under any other Act, is Section 260 of the Rajasthan Land Revenue Act.

Section 260 (1) (b) of the Rajasthan Land Revenue Act, which is relevant for the present purposes, reads as under:-

> "260 Delegation-(1) The State Government may, by notification in the official gazette-
>
> (a) .....
>
> (b) direct that any duties imposed and powers conferred by this Act or the rules made thereunder or by any other law for the time being in force or the rules made under such other law on any officer or authority appointed or constituted under this Act or the rules made thereunder shall, to the exclusion of such officer or authority, be performed and exercised by any other lawfully appointed or constituted officer or authority specified in the notification, whether such other officer or authority specified in the notification, whether such other officer or authority shall have been appointed or constituted under this Act or the rules made thereunder or under nay other law for the time being in force or the rules made under such other law, or
>
> (c) .....
>
> (d) ....."

Primary condition is that the officer whose functions can

be delegated under Section 260 must be such functions which are to be discharged by a revenue officer governed by the Rajasthan Land Revenue Act. Section 260 of the Rajasthan Land Revenue Act enables the State Govt. that it may direct that any duties imposed and power conferred by the Rajasthan Land Revenue Act or Rules framed thereunder shall, to the exclusion of any such officer or authority, be performed and exercised by any other lawfully appointed or constituted officer or authority specified in the notification. The two provisions read together alongwith Section 5 of the Colonisation Act, which extends the applicability of the Rajasthan Land Revenue Act and Rajasthan Tenancy Act to the Colony Area governed by the Rajasthan Colonisation Act, which makes it trinity of cognate legislations, may enable the State Government to empower any officer of the Colonisation Department to discharge the functions of Collector under Section 232 of the Rajasthan Tenancy Act in respect of order passed by any revenue court or officer subordinate to Collector in terms of Section 232 of the Rajasthan Tenancy Act by dint of Section 260(1) (b) of Rajasthan Land Revenue Act. But the scheme of Section 260 of Rajasthan Land Revenue Act clearly postulates the exclusive character of the conferment of power. That is to say the conferment of power under Section 260 on any authority other than the one prescribed under the parent legislation is to the exclusion of such power by any other authority. This fortifies our conclusion that under the Scheme of Section 232 of Rajasthan Tenancy

Act and the Colonisation Act, exercise of such power in respect of same matter concurrently by more than one officer is ruled out.

Considered in this light, if it be taken that power of Collector under Section 232 cannot be conferred on an officer of Colonisation department in exercise of powers under Section 6, but it can be so conferred in exercise of power under Section 260 of the Land Revenue Act, the notification in this regard may not become bad for want of describing wrong provision of law under which such power of Collector has been conferred on any officer. But on such conferment of power under Section 232 on any officer, any other officer erstwhile exercising the power of Collector in that area shall cease to exercise powers under Section 232 and the person notified to exercise power under Section 232 shall hold exclusive power to make a reference under Section 232 thereafter.

On general principles also even if the notification dated 17/10/1978 is considered that conferring general powers of Collector include power of making reference under Section 232 of the Rajasthan Tenancy Act, on specific Notification conferring on the Commissioner, Colonisation vide notification dated 15/1/1992 power to exercise power of Collector under Section 232 of Rajasthan Tenancy Act, any other officer hitherto exercising power under Section 232 of the Act of 1955

shall cease to exercise such power and officer specifically authorised to exercise power of Collector under Section 232 shall have the exclusive power to make a reference in respect of any proceedings or orders or decree passed by any revenue court or authority subordinate to Collector, both on the principle that there being no room for having more than one authority to exercise power of supervision in respect of same subject matter under the provisions of all the three enactments as well as on the principle that subsequent conferment of specific power in one authority, which includes exercise of such power by an authority who was conferred generally the powers of Collector, to be exercised by officer of Colonisation Department to try and hear all the applications, suits or appeals, as well as on principle that when there is conferment of general authority, subsequent conferment of specific authority on another officer, the specific authorisation contained in subsequent notification shall exclude the application of general authorisation made earlier.

In this connection, reference may be made to Craies on Statute Law that where a later enactment affects the same purpose as in earlier one by repetition of its term or otherwise it impliedly supersedes the earlier enactment.

Viewed from this angle, since issuance of notification dated

15/1/1992 any other authority has ceased to exercise power to make reference to the Board under Section 232 of the Rajasthan Tenancy Act in the Colony Area.

In view of the aforesaid conclusion, the reference made by Deputy Commissioner, Colonisation must be held to be incompetent.

No other provision has been brought to our notice under which Board could have exercised its jurisdiction to set aside the decree passed in favour of petitioner-appellant by the Assistant Commissioner, Colonisation empowered to act as Sub Divisional Magistrate vide order dated 27/4/1987 could be interfered by the Board.

Moreover, we find that the decree passed by the Assistant Commissioner, Colonisation, Kolayat on 27/4/1987 was founded purely on the basis of appreciation of evidence in the presence of State representative, who had ample opportunity to lead evidence to the contrary. The power of superintendence or revising the orders of trial court cannot be used merely for the purpose of arriving at a different finding of fact on appreciating evidence when party aggrieved against the decree had ample opportunity to challenge those findings by way of appeal. There are no extra ordinary reasons to get over the findings of fact by appreciating evidence through exercise of extra ordinary power.

Accordingly, this appeal is allowed. Judgment under appeal is set aside. Consequently, writ petition is allowed and order of Board of Revenue dated 11/2/1997 and Deputy Commissioner, Colonisation dated 22/9/1993 are hereby quashed. There shall be no order as to costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

Pankaj Baweja